

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION**

In re:)	
)	
ASARCO LLC, et al.)	Case No. 05-21207
)	Chapter 11
)	
<u>Debtors.</u>)	

**SETTLEMENT AGREEMENT REGARDING THE BARKER HUGHESVILLE
(BLOCK P) SITE**

WHEREAS, the Barker Hughesville Mining District (Block P) NPL Site (the “Site”) is contaminated by various hazardous substances released into the environment as a result of historic mining activities throughout the Site, which is located in Cascade and Judith Basin Counties, Montana;

WHEREAS, the Site was listed by the United States Environmental Protection Agency (“EPA”) on the National Priorities List in 2001;

WHEREAS, the State of Montana (the “State”), acting through the Montana Department of Environmental Quality (“MDEQ”), has identified the Site as a priority and has asserted jurisdiction over the Site under applicable state and federal law including, but not limited to, the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601 et seq. (“CERCLA”);

WHEREAS, the State has alleged that ASARCO is a potentially responsible party with respect to the Site;

WHEREAS, the State has alleged that it has incurred past response costs, and will incur additional future response costs, under CERCLA or state law, in connection with the Site for which ASARCO allegedly is liable;

WHEREAS, ASARCO filed with the United States Bankruptcy Court for the Southern District of Texas a voluntary petition for relief under Title 11 of the United States Bankruptcy Code on August 9, 2005 (the “Bankruptcy Case”);

WHEREAS, the State filed Proof of Claim No. 10524 in the Bankruptcy Case setting forth claims against ASARCO under Section 107 of CERCLA and Section 75-10-715 of the Montana Comprehensive Environmental Cleanup and Responsibility Act (“CECRA”) for various past and future response costs in connection with the Site;

WHEREAS, ASARCO has disputed the claims with respect to the Site filed by the State as set forth in the Proofs of Claim and/or various expert reports submitted by the State;

WHEREAS, the Court established a process for estimating the claims of the State with respect to the Site;

WHEREAS, the Court has set a date for a hearing for the purpose of estimating the claims of the State with respect to the Site;

WHEREAS, the Site is on the National Priorities List, and while the United States on behalf of EPA has not filed a proof of claim for this Site, EPA expects to incur response costs and might seek to file a late Proof of Claim for the Site;

WHEREAS, the parties hereto desire to settle, compromise and resolve their disputes without the necessity of an estimation hearing;

WHEREAS, in consideration of, and in exchange for, the promises and covenants herein, the parties hereby agree to the terms and provisions of this Settlement Agreement (“Settlement Agreement”); and

WHEREAS, this Settlement Agreement is in the public interest and is an appropriate means of resolving this matter.

NOW, THEREFORE, without the admission of liability or any adjudication on any issue of fact or law, and upon the consent and agreement of the parties by their attorneys and authorized officials, it is hereby agreed as follows:

I. JURISDICTION

1. The Bankruptcy Court has jurisdiction over the subject matter hereof pursuant to 28 U.S.C. §§ 157, 1331, and 1334.

II. PARTIES BOUND; SUCCESSION AND ASSIGNMENT

2. This Settlement Agreement applies to, is binding upon, and shall inure to the benefit of the parties hereto, their legal successors and assigns, and any trustee, examiner or receiver appointed in the Bankruptcy Case.

III. ALLOWANCE OF CLAIMS

3. In settlement and satisfaction of all claims and causes of action of the State with respect to any and all costs of response incurred, or to be incurred, by the State in connection with the Site (including but not limited to the liabilities and other obligations asserted in the Proof of Claim and other pleadings filed in the Bankruptcy Court by the State) and in recognition of EPA's agreement herein not to file a late Proof of Claim for the Site, the State, on behalf of MDEQ, shall have an allowed general unsecured claim in the total amount of \$7,100,000 with respect to the Site, and the United States, on behalf of EPA, shall have an allowed general unsecured claim in the total amount of \$1,000,000.

4. MDEQ will place and maintain any distributions received by MDEQ on account of its allowed general unsecured claim set forth in Paragraph 3 in a State special revenue

fund, as provided for in § 17-2-102(1)(b)(i), MCA, to be known as the “Barker Hughesville State Response Cost Account.” MDEQ shall use the funds in this account, together with all interest and earnings thereon, only for the State’s CERCLA cost share requirements and cleanup at the Site. Distributions received by EPA shall be deposited in a site specific special account for the Site within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substances Superfund. MDEQ shall not seek or receive any reimbursement or any proceeds from the \$1,000,000 allowed general unsecured claim to go to EPA pursuant to Paragraph 3, and EPA shall not seek or receive any reimbursement or any proceeds from the \$7,100,000 allowed general unsecured claim to go to DEQ pursuant to Paragraph 3, provided, however, that nothing herein shall preclude MDEQ from agreeing to use such proceeds to implement a cleanup action at the Site selected by EPA.

5. All allowed general unsecured claims under this Settlement Agreement shall not be subordinated to other general unsecured claims pursuant to any provisions of the Bankruptcy Code or other applicable law that may be contended to authorize or provide for subordination of allowed general unsecured claims, including without limitation sections 105 and 510 of the Bankruptcy Code.

6. With respect to the allowed general unsecured claim set forth in Paragraph 3 for the State, only the amount of cash received by the MDEQ (and net cash received by the MDEQ on account of any non-cash distributions) in the bankruptcy case and not the total amount of the allowed general unsecured claim, shall be credited by the MDEQ to its account for the Site. With respect to the allowed general unsecured claim set forth in

Paragraph 3 for EPA, only the amount of cash received by EPA (and net cash received by EPA on account of any non-cash distributions) in the bankruptcy case and not the total amount of the allowed general unsecured claim, shall be credited by EPA to its account for the Site.

IV. COVENANTS NOT TO SUE

7. With respect to the Site (including releases of hazardous substances from any portion of the Site, and all areas affected by natural migration of such substances from the Site) and except as specifically provided in Section V (Reservation of Rights), the State, on behalf of MDEQ, covenants not to sue or assert any civil claims or causes of action against ASARCO pursuant to Sections 106, 107(a) or 113 of CERCLA, 42 U.S.C.

§§ 9606, 9607, and 9613; the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq. ("RCRA"); the Clean Water Act, 33 U.S.C. § 1251 et seq. ("CWA");

CECRA or any similar state law, for any liabilities or obligations asserted with respect to the Site in the Proof of Claim.

8. Except as provided in Section V, the State, on behalf of MDEQ, agrees that upon confirmation of a plan of reorganization in the Bankruptcy Case, any and all obligations or liabilities of ASARCO under Sections 106 or 107 of CERCLA, 42 U.S.C. §§ 9606, 9607; RCRA; the CWA; CECRA or any similar state laws related to the Site will be discharged. Moreover, the State, on behalf of MDEQ, agrees not to assert a claim in the Bankruptcy Case for such obligations or liabilities.

9. Except as provided in Section V, the United States, on behalf of EPA, agrees that upon confirmation of a plan of reorganization in the Bankruptcy Case, any and all obligations or liabilities of ASARCO under Sections 106 or 107 of CERCLA, 42 U.S.C.

§§ 9606, 9607, or Section 7003 of RCRA, 42 U.S.C. § 6973, related to the Site will be discharged. Moreover, the United States, on behalf of EPA, agrees not to assert a claim in the Bankruptcy Case for such obligations or liabilities.

10. This Settlement Agreement in no way impairs the scope and effect of the Debtor's discharge under Section 1141 of the Bankruptcy Code as to any third parties or as to any claims that are not addressed by this Settlement Agreement.

11. Without in any way limiting the covenant not to sue (and the reservations thereto) set forth in Paragraph 7 and notwithstanding any other provision of this Settlement Agreement, such covenant not to sue shall also apply to ASARCO's successors and assigns, officers, directors, employees, and trustees, but only to the extent that the alleged liability of the successor or assign, officer, director, employee, or trustee of ASARCO is based solely on its status as and in its capacity as a successor or assign, officer, director, employee, or trustee of ASARCO.

12. The covenant not to sue contained in Paragraph 7 of this Settlement Agreement extends only to ASARCO and the persons described in Paragraphs 7 and 11 above and does not extend to any other person. Nothing in this Agreement is intended as a covenant not to sue or a release from liability for any person or entity other than ASARCO, the State, the United States, and the persons described in Paragraph 11. The State, United States, and ASARCO expressly reserve all claims, demands, and causes of action either judicial or administrative, past, present or future, in law or equity, which the State, United States, or ASARCO may have against all other persons, firms, corporations, entities, or predecessors of ASARCO for any matter arising at or relating in any manner to the Site and/or claims addressed herein.

13. Nothing in this Settlement Agreement shall be deemed to limit the authority of the State or EPA to take response actions under any applicable law or regulation, or be deemed to alter the applicable legal principles governing judicial review of any action taken by the State or EPA pursuant to that authority. Nothing in this Settlement Agreement shall be deemed to limit any information gathering authority of the State or the United States under Sections 104 and 122 of CERCLA, 42 U.S.C. §§ 9604 and 9622, or any other applicable state or federal law or regulation, or to excuse the Debtor from any disclosure or notification requirements imposed by CERCLA, RCRA, or any other applicable state or federal law or regulation.

14. Debtor covenants not to sue and agrees not to assert any claims or causes of action against the State, including any of its departments, agencies or instrumentalities, with respect to the Site, including but not limited to any claims for reimbursement, contribution, or cost recovery under CERCLA or CECRA and any claims arising out of the response activities at the Site. Debtor agrees not to seek any reimbursement or assert any claims or causes of action against the United States with respect to any payments it makes pursuant to this Settlement Agreement, including but not limited to: any direct or indirect claim for reimbursement from the Hazardous Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507) through CERCLA Sections 106(b)(2), 107, 111, 112, 113, 42 U.S.C. §§ 9606(b), 9607, 9611, 9612, 9613, or any other provision of law; and any claims against the United States, including any of their departments, agencies or instrumentalities, under Section 107 or 113 of CERCLA, 42 U.S.C. §§ 9607, 9613. Nothing in this Settlement Agreement shall be construed to

constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611 or 40 C.F.R. § 300.700(d).

V. RESERVATION OF RIGHTS

15. The covenant not to sue set forth in Section IV does not pertain to any matters other than those expressly specified therein. The State and EPA reserve, and this Settlement Agreement is without prejudice to, all rights against the Debtor or other persons with respect to all other matters, including but not limited to: (i) any action to enforce the terms of this Settlement Agreement; and (ii) liability for response costs and injunctive relief under CERCLA Sections 106 and 107 or state law for Debtor's future acts creating liability under such laws that occur after the date of this agreement. Debtor's future acts creating liability under such laws do not include continuing releases related to Debtor's pre-petition conduct.

16. Nothing in this Settlement Agreement shall be construed to create any rights in, or grant any cause of action to, any person not a party to this Settlement Agreement.

VI. CONTRIBUTION PROTECTION

17. The parties hereto agree that, as of the Effective Date, ASARCO is entitled to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), for matters addressed in this Settlement Agreement, provided however, that nothing herein shall affect the settlement between ASARCO and Doe Run for this Site or the allowed general unsecured claim granted to Doe Run pursuant to that settlement. The matters addressed in this Settlement Agreement include all costs of response incurred or to be incurred by the State or EPA relating to or in connection with the Site.

VII. PUBLIC COMMENT

18. This Settlement Agreement will be subject to a thirty (30) day public comment period following notice published in the Federal Register, which may take place concurrent with the judicial approval process under paragraph 19 hereof. The United States and the State reserve the right to withdraw or withhold their consent if the public comments regarding the Settlement Agreement disclose facts or considerations that indicate that this Settlement Agreement is inappropriate, improper, or inadequate. At the conclusion of the public comment period, the United States and the State will provide the Court with copies of any public comments and their response thereto.

VIII. JUDICIAL APPROVAL

19. The settlement reflected in this Settlement Agreement shall be subject to approval by the Bankruptcy Court pursuant to Bankruptcy Rule 9019. The Debtor shall move promptly for court approval of this Settlement Agreement and shall exercise commercially reasonable efforts to obtain such approval.

IX. RETENTION OF JURISDICTION

20. This Court shall retain jurisdiction over both the subject matter of this Settlement Agreement and the parties hereto, for the duration of the performance of the terms and provisions of this Settlement Agreement for the purpose of enabling any of the parties to apply to the Court at any time for such further order, direction and relief as may be necessary or appropriate for the construction or interpretation of this Settlement Agreement, or to effectuate or enforce compliance with its terms.

X. EFFECTIVE DATE

21. This Settlement Agreement shall be effective upon approval by the Court in accordance with Paragraphs 18 and 19 hereof.

XI. SIGNATORIES/SERVICE

22. The signatories for the parties each certify that he or she is authorized to enter into the terms and conditions of this Settlement Agreement and to execute and bind legally such Party to this document.

[Remainder of Page Intentionally Blank]

THE UNDERSIGNED PARTIES ENTER INTO THIS SETTLEMENT AGREEMENT

**FOR THE STATE OF MONTANA, ACTING BY AND THROUGH
THE MONTANA DEPARTMENT OF ENVIRONMENTAL
QUALITY**

Date: 11/14/07



Richard H. Oppen
Director
Department of Environmental Quality

Date: 11-14-07



William B. Kirley
Legal Counsel
Department of Environmental Quality

FOR THE UNITED STATES

Date: _____


/s/ Ronald J. Tenpas
Ronald J. Tenpas
Acting Assistant Attorney General
Environment and Natural Resources
Division
U.S. Department of Justice

Date: _____

/s/ Alan S. Tenenbaum
Alan S. Tenenbaum
David L. Dain
Environment and Natural Resources
Division
Environmental Enforcement Section
U.S. Department of Justice


FOR ASARCO, LLC

Date: 1/17/08



Thomas L. Aldrich
Vice President, Environmental Affairs

Date: 1-17-08



Douglas E. McAllister
Executive Vice President, General Counsel